Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Mahinder S. Uberoi, petitioner,
v.
City of Boulder, et al., respondents.

Mahinder S. Uberoi, petitioner,
v.
Henry F. Anton, et al., respondents.

PETITION FOR THE WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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Questions Presented

I. Whether District Judge John L. Kane was disqualified for several independent reasons stated below?

(a) The respondents Anton et al. are the Regents and officials of the University of Colorado. Petitioner sued them for their employment discrimination against him because of his Asian Indian origin. In 1996 Judge Kane successfully applied to teach a course at the University. He was paid $5000.00. His request to teach again was denied but he continued to seek such employment even when petitioner's suit against the Regents and the officials of the University came before him. For instance, on April 22, 2003 he submitted an 8-page application to teach a course at the University. On September 8, 2003 he dismissed petitioner's case against the Regents and officials of the University incorrectly claiming that the petitioner had disobeyed his orders. On December 16, 2003 he was appointed to teach the course for pay of $3273.00. 28 U.S.C. § 455 (a) requires that a judge shall recuse himself if "his impartiality might be reasonably questioned."

(b) In 1988 Judge Kane took disability retirement under 28 U.S.C. § 372 (a), having been diagnosed as suffering from sleep apnea which is characterized by a cessation of breathing during sleep, which he claimed was caused by the stress of his judicial duties. After some two years, as a Senior District Judge, he was assigned limited judicial duties.

His health was further declining when on July 2, 2002 petitioner's case against the University was assigned to him. And he developed breast cancer. Finally, he announced that he will not hold any hearings from August 25, 2003 to December 31, 2003. And he will work in his chambers or at home. He had no or severely diminished physical and mental ability to perform his judicial duties when on September 8, 2003 he wrongly dismissed petitioner's case against the Regents and officials of the University.

(c) The November 22-28, 2001 issue of the weekly newspaper WESTWORD features Judge Kane. It is entitled KANE MUTINY. It states that Judge Kane held an informal "hearing" in his chambers at the U.S. Courthouse to denounce the federal drug laws because they are unjust and persons convicted of drug abuse can avoid time if they are related to a prominent politician. The paper quotes Judge Kane:

"Then there is Arizona Senator John McCain's wife, Cindy McCain, who admits to stealing Percocet and Vicodin from a charity. Even though illegal use of the pills - classified by the government as schedule 2 drugs which puts them in the same class as opium - carries a penalty of one year in prison, McCain is allowed to enter a treatment program, instead. This is a kind of crap, the hypocrisy of the whole thing...A couple [of judges] have said that I am fomenting disrespect of the law. Most say that that 'I can't give the appearance of being biased.'"

Judge Kane is unable to administer the law without regard to his extreme personal views and bias.

2. Whether the Tenth Circuit's refusal to order the disqualification of District Judge Kane is in conflict with the decisions of every other circuit in identical or similar circumstances?

3. Whether the Tenth Circuit's allowance of District Judge Kane to resolve petitioner's motion to disqualify Judge Kane is in Conflict with the Fifth Circuit Practice that a motion to disqualify a District Judge is heard by a District Judge from another District?

4. Whether the Court of Appeals' statement that in 1989 petitioner was enjoined from appearing pro se in the federal district of Colorado because he had filed pro se numerous frivolous and vexatious suits in the district is

refuted by the record which shows that petitioner had filed only two cases?

In the one case the Court ordered petitioner to engage in discovery for nearly four years, even though the defendants had not answered the complaint because they were resting on their motion to dismiss. The court resolved the motion nearly four years after it was filed. Then, the defendants answered the complaint, but before that the court set a date for discovery cut off. The court dismissed the case for petitioner's failure to meet the deadline. The court claimed that petitioner had more than sufficient time to complete discovery, nearly four years before the answer was filed and seven weeks after the answer was filed.

The other case was dismissed on defendants' fraudulent motion that it had become moot. It later proved not to be moot.

5. Whether the Tenth Circuit Court of Appeals' statement that petitioner recently filed a *frivolous* suit in the U.S. District Court for the District of Columbia is refuted by its own follow up statement that the Appellate Court affirmed the dismissal of the complaint for failure to state a claim?

The Tenth Circuit also stated that petitioner also filed an unsuccessful petition for writ of mandamus with the same federal district which he never did.

6. Whether the 1989 invalid and expired injunction prohibiting petitioner from appearing pro se should have been vacated or modified because of the changed circumstances, such as the fact that he had paid the attorney fees assessed against him which was the main reason for the injunction?

7. Whether the district court orders dismissing petitioner's two civil rights cases for his failure to retain an attorney to represent him in the two cases should have been

amended or modified on petitioner's motion that in several documented attempts he was unable to retain an attorney within the few business days allowed by the court?

8. Whether the clerk of the U.S. Court of Appeals for the Tenth Circuit acted without jurisdiction in the consolidated cases when he refused to transmit to the en banc court petitioner's motion for leave to file a one day late petition for rehearing and rehearing en banc, instead he transmitted the motion only to the 3-judge appellate panel which without jurisdiction denied the motion and thus prevented the full court from exercising its en banc power under 28 U.S.C. § 46 (c) to resolve the motion?

9. Whether the courts of the Tenth Circuit have denied petitioner a fair opportunity to litigate his civil rights cases such as by three times ordering petitioner to file a pre-trial order when the defendants in the case had not even answered the complaint because they were resting on their motion to dismiss the case which the court had not resolved?

List of the parties in the two cases that were consolidated in the United States Court of Appeals for the Tenth Circuit. Petitioner seeks review of the judgments of the Court of Appeals in the two consolidated cases.

MAHINDER S. UBEROI,
Petitioner,
v.

CITY OF BOULDER; K. YOKOMIZO-BURTON; DON SPICELY; GRETCHEN KING,
Respondents.

MAHINDER S. UBEROI,
Petitioner,

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGHTNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI; ROBERT L. LORCH; ROBLEY D. RHINE,
Respondents.

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October Term, 2004

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Henry F. Anton, et al., respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, Mahinder S. Uberoi, respectfully prays that a writ of certiorari issue to:

(a) review the judgment of the United States Court of Appeals for the Tenth Circuit on the interlocutory appeal entered in the above proceedings on May 1, 2003, rehearing denied on August 27, 2003 and

(b) review the final judgment of the Court of Appeals entered in the above proceedings on October 18, 2004 rehearing denied on December 17, 2004.